

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the following discussion, is respectfully requested.

Claims 1-11 are pending in the present application.

In the outstanding Office Action, Claims 1, 9, 10 were rejected under 35 U.S.C. §103(a) as unpatentable over Okajima et al. (U.S. Patent No. 6,636,262, herein Okajima) in view of Takei (U.S. Patent No. 5,353,058); and Claims 2-8 and 11 were indicated as allowable if rewritten in independent form.

Applicant thanks the Examiner for the indication of allowable subject matter. However, these claims have been presently maintained in dependent form because Applicant considers the pending independent claims patentably distinguishing over the applied art.

Briefly recapitulating, Claim 1 is directed to an exposure control apparatus configured to determine an exposure value based on a luminance of a photographic screen and to perform exposure control based on a determined exposure value. The exposure control apparatus includes an area generating unit configured to divide the photographic screen into a predetermined number of areas. A deciding unit is configured to decide, for each area generated by the area generating unit, whether a main subject that has a luminance higher than a predetermined threshold exists within the areas. An average luminance calculating unit is configured to calculate an average luminance in an area generated by the area generating unit according to a decision result by the deciding unit. An exposure value determining unit is configured to determine an exposure value based on the average luminance calculation by the average luminance calculating unit.

M.P.E.P. §2143.01 states:

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings are not sufficient to render the claims *prima facie* obvious.

In view of M.P.E.P. §2143.01, Applicant respectfully traverses the outstanding ground of rejection because the outstanding Office Action fails to provide a *prima facie* case of obviousness.

Okajima is directed to solving a problem associated with automatically focusing on a picture plane that includes a high luminance object. Okajima describes an automatic focusing device that removes high frequency components from evaluation, by excluding integration of the high frequency component in an area having a luminance level equal to or higher than a prescribed value.¹ If the luminance signal is larger than the threshold value, high luminance portion cut circuit 91 prohibits the luminance signal from being output and impedes the luminance signal from being integrated by integration circuit 96.² Integration circuit 96 then produces a focus evaluation value by integrating the applied luminance signal, which is without the high luminance part, of each region.³ Thus, the autofocus device of Okajima determines the proper exposure value for a picture plane that includes a high luminance object by eliminating frequency components of the high luminance part.

Takei is directed to another solution to the problem associated with automatically focusing on a picture plane that includes a high luminance object. Takei describes an automatic exposure control apparatus that performs an appropriate exposure control conforming to the photographic condition of the subject by retrieving one divided area, which has a chromacity component of a predetermined level, from among a plurality of divided areas. Takei describes correcting a photometric control signal using the luminance level of the retrieved divided area as the brightness of the subject.⁴

More specifically, Takei describes that a picture plane is divided into a plurality of areas. The average value of one the luminance signal levels of these areas is used as the

¹ Okajima, col. 1, lines 44-50.

² Okajima, col. 5, lines 51-54.

³ Okajima, col. 5, lines 8-10.

⁴ Takei, col. 2, lines 59-64.

luminance level of the periphery of the subject. Microcomputer 59 outputs any one of the luminance signal levels for any one of the divided areas as the luminance level of the subject. Thus, Takei describes using the average luminance level of one area that includes a predetermined chromacity level (i.e. flesh color)⁵ to correct the entire picture plane.⁶ Thus, Takei determines the representative luminance value for the entire picture plane by using the average luminance of a single divided area.

Thus, the principle of operation of Okajima is eliminating the high frequency component of the high luminance object before determining the proper exposure value. The principle of operation of the Takei is to divide an image plane into a plurality of areas, to determine an average luminance level of each area, and to select one divided area (based on a predetermined chromacity level) to be used to determine the proper exposure value for the image plane. Okajima cannot be modified to determine an exposure value based on an average luminance level because the principle of operation of Okajima (removing high frequency components), when combined with Takei, would be changed to determining an average luminance level of a plurality of areas and selecting one area, based on chromacity level, to determine the proper exposure value.

In effect, the outstanding final rejection does little more than attempt to show that parts of the inventive combination of Claim 1 were individually known in other arts and to suggest that such a showing is all that is necessary to establish a valid case of *prima facie* obviousness. The PTO reviewing court recently reviewed such a rationale and dismissed it in *In re Rouffet*, 149 F. 3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998) as follows:

As this court has stated, "virtually all [inventions] are combinations of old elements." *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 698, 218 USPQ 865, 870 (Fed. Cir. 1983); see also *Richdel, Inc. v. Sunspool Corp.*, 714 F.2d 1573, 1579-80, 219 USPQ 8,

⁵ Takei, col. 8, lines 20-28.

⁶ Takei, col. 2, lines 58-64.

12 (Fed. Cir. 1983) ("Most, if not all, inventions are combinations and mostly of old elements."). Therefore an examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be "an illogical and inappropriate process by which to determine patentability." *Sensonic, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570, 38 USPQ2d 1551, 1554 (Fed. Cir. 1996). To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. [Emphasis added.]

There has been no such showing of those required reasons made in the final rejection.

Thus, Applicant respectfully submits that Claim 1 (and Claims 2-8) patentably distinguish over Okajima and Takei, taken alone or in proper combination. Claims 9 and 10 are similar to Claim 1. Thus, Applicant respectfully submits that Claims 9 and 10 (and Claim 11) patentably distinguish over Okajima and Takei, taken alone or in proper combination, for at least the reasons stated for Claim 1.

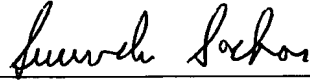
Consequently, in light of the above discussion, the present application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Gregory J. Maier
Registration No. 25,599

Surinder Sachar
Registration No. 34,423